

May 20, 2009

FCC, Office of the Secretary  
445 12<sup>th</sup> Street SW  
Washington DC 20554

Subject: Letter of Appeal

Applicant Name/Billed Entity Name: Anaheim Public Library

Billed Entity Number: 143737

FCC Registration Number: 0013407721

471 Application Number: 520930

Funding Request Number: 1434000

CC Docket No: 02-6

Notification of Commitment Adjustment Letter: February 11, 2009

This letter is an Appeal to the Decision for Recovery of Funds for \$169,582.85 and \$8,850.60 as described in the reports for the entity and its application listed above. For questions regarding this appeal, please contact:

Thomas Edelblute, Public Access Systems Coordinator  
Anaheim Public Library  
500 West Broadway  
Anaheim CA 92805  
Phone: 714-765-1759, Facsimile: 714-765-1730  
e-mail: [tedelblute@anaheim.net](mailto:tedelblute@anaheim.net)

### **Introduction**

The Anaheim Public Library has applied for and has been the beneficiary of e-rate funds for telecommunication discounts and internal connections hardware since 2002.

In 2005, the Anaheim Central Library applied for funds for major renovation of the building, which included the replacement of outdated and non-serviceable network switching/routing hardware. To help offset the cost of the hardware, the library sought and was allocated e-rate funds for reimbursement of its costs. This hardware was purchased during the funding year 2006-2007, installed by the City of Anaheim and successfully delivered to the Anaheim Library Community.

In February 4-7, 2008 the Anaheim Library was audited concerning its use of the e-rate funds for this network hardware and the auditors noted several compliance deficiencies in the Anaheim Library's application process. In 2009 the USAC ordered the Anaheim Public Library to return \$169,582.85 and \$8,850.60 totaling \$178,433.45 based on these deficiencies.

Since 2002, the Anaheim Public Library has benefited from E-rate funds and provided the residents and community of Anaheim access to essential information via the Internet. This funding continues to be a critical resource for providing high-speed telecommunication lines for

Internet access in low income areas of the City where children and their families do not have computer resources in their homes and find that the library is their lifeline for Internet service. Public computer access has also become increasingly critical to growing numbers of adults daily searching for jobs and public assistance via this free resource. The network equipment purchased with these funds supported 257,089 free public Internet sessions to 40,000 individuals in FY06/07. One third of all library users and more than 10% of the total population of Anaheim rely on the public library for their Internet access.

E-rate funds have recently been used to replace outdated hardware and equipment in low income areas of the City, to improve the quality and quantity of Internet access at library sites. The Anaheim Central Library specifically utilized the \$178,433.45 of e-rate funds during a building renovation to replace outdated and non-serviceable network hardware, enabling it to provide Anaheim's residents more than double the number of computer stations as it did in 2003.

The Anaheim Public Library has conscientiously and carefully applied for e-rate funding that would enable it to meet the Information needs of residents over the last six years. All of these federal funds allocated to the Anaheim Library have been consistently and exclusively used for the very specific and specialized technologies indicated in its e-rate applications.

In summary, the Library has not committed any waste, fraud or abuse in the deficiencies cited in the USAC Notification and supporting reports and has proceeded in good faith and due diligence to correct the cited errors and deficiencies. The Library serves an expanding population and growing need for public services accorded by the e-rate funding program. The public interest in delivering the much needed advanced telecommunications services to this growing population is better served by the recommended corrections to the deficiencies rather than the imposition of the monetary penalties that would only harm these Library programs.

#### **Appeal of Notification Re: Funds Sought to be Recovered: \$169,582.85**

##### **I. Funding Disbursement Report – Disbursed Funds Recovery Explanation:**

After a thorough investigation, it has been determined that funds were improperly disbursed on this funding request. During the course of an audit it was determined that the technology plan for this entity was not approved at the time of submission of the Form 486. Program rules require applicants to obtain approval of technology plans by parties qualified to approve technology plans, prior to submitting the Form 486, for services other than basic telecommunications service. Since this is not a request for basic telecommunications service, the technology plan needed to be approved prior to submitting the Form 486 or the start of services, whichever was earlier. Also during the course of an audit it was determined that funding was disbursed for Priority 2 non-recurring services installed outside of the relevant funding year. FCC rules require applicants to use recurring services within the relevant funding year, and to implement non-recurring services by the applicable deadline established by the Commission. In this instance, the applicant made the certifications on the BEAR Form listed below indicating that the services had been provided within the funding year's applicable deadlines. On the BEAR Form at column 13 and Block 3 Item A, the authorized person represents to USAC that the products and services were delivered to the applicant within the applicable deadline for the relevant funding year. Since these requirements were not met USAC will seek recovery of any improperly disbursed funds from the applicant in the amount of \$169,582.85.

**Auditors Finding SL2007BE082\_F01:**

*“[T]he technology plan for this entity was not approved at the time of submission of the Form 486.”*

**Library’s Response to finding**

In August of 2005 the Library submitted its three-year Technology plan to the California State Library. However, the auditors correctly state that the Library did not receive formal notice that the plan had been approved. The Library held a good faith belief, however, that it did have the state’s approval. This belief was premised upon the fact that the Library had not received formal acknowledgement of its 3-year Technology plan sent in September of 2002 either. Apparently, the state had issued a written approval of the 2002 plan which Anaheim Library did not have in its official records.

When the auditors uncovered this discrepancy, another copy of the Technology Plan was immediately e-mailed to the State Library. An email correspondence between Rushton Brandis at the State Library and Anaheim Public library staff on February 7, 2008 confirmed that the Library’s 2005 Technology Plan met all the requirements for State approval and, had it been received by the State in 2005, it would have been certified/approved. This correspondence is enclosed/attached for your review as Attachment “A”.

**Auditor’s Recommendation:**

The auditor recommended that:

1. Anaheim Library ensure *a technology plan approval letter* is obtained for each year in which Schools and Library funds are requested and
2. USAC seeks recovery of \$169,582.85 of the funds disbursed under 1434000 to the Anaheim Library according to FCC Rules and Orders.

**Library’s appeal of this recommendation and USAC decision:**

The Anaheim Library submits to the first part of the recommendation and will implement administrative safeguards which ensure that all future requests include a *technology plan approval letter*. The library will accomplish this by creating a staff position which has grants and funding oversight as one of its responsibilities. This individual will monitor and oversee the application for, and implementation, disbursement, and tracking of all grants and outside funding. This will ensure that application requirements are met, that each step of the process is systematically reviewed, and that communication between the library and all funding and/or oversight agencies is maintained.

The Anaheim Library appeals the ruling and monetary penalty recommendation that USAC recover \$169,582.85 in disbursed funds based on the following:

The Anaheim Library did not engage in waste, fraud or abuse of the program. In fact, it appears that the City's errors/omissions upon which the USAC has premised its recommendation of are essentially procedural flaws, given the State's indication that the plan submitted by Anaheim would have been approved.

Anaheim Library's records demonstrate a pattern and practice over the years of compliance with all applicable rules at all times, including a good faith attempt to comply in all respects in their submission for the year in question. In prior years, the Library submitted its technology plan by mail to the state and obtained approval and funding without incident. Consistent with Anaheim's established practices, a technology plan was developed over a period of months and mailed to the state for its approval in 2005. The Anaheim Library did not have a record of receipt of written approval from the state of its previous (2002) technology plan and thus did not anticipate receipt of a written approval from the state when submitting its form 486. The Library had thus submitted its technology plan to the state in 2005 and proceeded in the good faith belief it had an approved technology plan when it applied for the funds and submitted its form 486. Significantly, the state has graciously indicated its de facto approval of the Anaheim Library 2005 technology plan. The Anaheim Library respectfully requests that the USAC and/or FCC recognize the state's de facto approval of the technology plan. The USAC's recovery of these funds would not advance the stated goals of the program of ensuring that schools and libraries have access to advanced telecommunications services. In fact, the recovery of these funds could severely adversely affect and/or hinder Anaheim Library's ability to provide access to such services in the future. The Library respectfully requests that it be permitted to retain these funds.

**Auditors Finding SL2007BE082\_F03:**

*"The Library installed equipment purchased under the Schools and Libraries program after the cut-off date for Priority 2 services". The applicant did not timely file for a service delivery extension.*

**Library's Response to finding**

The Library holds a good faith belief that the non-recurring goods and services were delivered and paid within the relevant funding year deadline established by the Commission (September 30, 2007). It is important to clarify that the Library did not seek or receive e-rate funds for installation costs. The non-recurring goods and services for which the E-rate funds were requested were paid for and delivered within the relevant funding year (prior to September 30, 2007).

Toward the end of the relevant funding year deadline, the Library was subjected to a two week emergency evacuation when a contractor caused structural damage to the building which compromised the structural integrity of the building. Although this may have caused a slight delay in the installation, the Library did not consider application for an extension since the

installation was performed by internal City staff and E-rate funds had not been sought or used for the costs associated with such installation. All of the non-recurring goods and services for which the E-rate funds were requested had been paid for and delivered well within the relevant funding year deadline.

The auditors have cited to FCC rule 54.505, which does not appear to include an extension filing procedure or refer to such extensions. However, the SLD web site provides guidelines in its web pages for filing extensions which state the following reasons considered for extensions:

1. A Funding Commitment Decision Letter (FCDL) is issued by USAC on or after March 1 of the funding year for which support is authorized.
2. Service provider change authorizations or service substitution authorizations are approved by USAC on or after March 1 of the funding year for which support is authorized.
3. The applicant requested an extension because the service provider was unable to complete delivery and installation for reasons beyond the service provider's control.
4. The applicant requested an extension because the service provider has been unwilling to complete delivery and installation after USAC withheld payment for those services on a properly-submitted invoice for more than 60 days after submission of the invoice.

The service provider was contracted for delivery of goods and not for the installation. Therefore, the service provider's responsibilities ended with the delivery of the network hardware to the City of Anaheim within the mandatory deadline. Evidence of invoicing and payment to this effect is enclosed/attached for review as Attachment "B". If installation is required to be completed even when not applied or paid for with E-rate funds, clarification of this definition and a CFR citation or guideline is respectfully requested for future reference and familiarization.

**Auditor's Recommendation:**

The auditor recommended *that the Library ensure that an extension is requested and received from the Universal Service Administrative Company if the internal connections installation can not be completed by the cut-off date of September 30.*

**Library's appeal of this recommendation and USAC decision**

The Library submits to this recommendation and will further familiarize itself with all applicable rules and regulations, including attendance by appropriate personnel to E-rate training sessions offered by the state and telecommunications companies. To this end, several staff members, including the staff member who has the responsibility of grants and funding oversight, will attend E-rate training.

The auditor's recommendation further referenced the recovery of \$113,055, noting it was already included in the \$178,434.00 discussed in Finding SL2007BE082\_F01. The Library respectfully submits that the Library's mistaken belief that no extension was needed as described above, was a harmless error and can be readily cured by the clarifications and more thorough review of applicable rules and regulations and education of its personnel proposed above. The Library further respectfully suggests that the proposed monetary penalty for failure to file for an extension under these circumstances would be inconsistent with the general public interest and contrary to the advancement of the stated goals of the program of ensuring that schools and libraries have access to advanced telecommunications services.

In summary, the Library has not committed any waste, fraud or abuse in the deficiencies cited in the USAC Notification and supporting reports and has proceeded in good faith and due diligence to correct the errors and deficiencies. The Library serves an expanding population and growing need for public services accorded by the E-rate funding program. The public interest in delivering the much needed advanced telecommunications services to this growing population is better served by the recommended corrections to the deficiencies rather than the imposition of the monetary penalties that would only harm these Library programs.

**Appeal of Notification Re: Funds Sought to be Recovered: \$8,850.60**

**II. Funding Disbursement Report – Disbursed Funds Recovery Explanation:**

After a thorough review, it was determined that the funding commitment for this funding request must be reduced by \$8,850.60. During the course of an audit it was determined that your Form 470 did not include the service for which you sought funding in your Form 471 application, which is a violation of the FCC's competitive bidding rules. On your Form 471 application part of the request was for maintenance of internal connections. However your Form 470 #372880000544522 did not post for this category of service. FCC rules require that except under limited circumstances, all eligible schools and libraries shall seek competitive bids for all services eligible for support. Since the services for which you sought funding were not properly posted to the website for competitive bidding, the commitment has been reduced by \$8,850.60 and USAC will seek recovery of \$8,850.60 from the applicant.

**Auditors Finding SL2007BE082\_F02:**

*"The Library misinterpreted the rules" and did not include a separate request for maintenance of internal connections on its Form 470.*

**Library's Response to finding**

The Library committed a clerical error in omitting to check the column concerning "basic maintenance" for internal connections. One RFP was issued for the purchase and prepayment of a maintenance plan. Thus, a separate RFP for maintenance was not issued. However, the actual

cost of the maintenance services were included in the bid solicitation, were covered in the vendor's bid and were paid for with the funds disbursed.

**Auditor's Recommendation:**

The Auditor has recommended that "the Library ensure that future reimbursement is requested only for eligible goods and services that were requested on the FCC Form 470" and a penalty/reduction in the amount of \$8,850.60. USAC has further noted that the funding commitment reduction of \$8,850.60 for these services is already included in the original award amount of \$178,433.45.

**Library's appeal of this recommendation and USAC decision:**

The Library submits that it committed a clerical error in its omission to check a portion of the form that would have segregated the cost of maintenance from the overall cost of the internal connection. This was a harmless procedural error and there was no abuse, fraud or waste. This problem can be readily cured by the Library's improved diligence in preparing its FCC Form 470 to carefully detail the goods and services it applies for in the future. New, additional safeguards will be implemented and several people, including a staff member specifically assigned for grants and funding oversight, will review all applications prior to submission. The Library respectfully requests that it be permitted to retain these funds with the understanding that these improved practices will be immediately implemented.

The Library has thoroughly reviewed and implemented the auditors' recommendations to cure the weaknesses noted in the Schedule of Findings. In accordance with these recommendations, the library's staff position created for grants and funding oversight, will monitor and oversee the application for, and implementation, disbursement, and tracking of all grants and outside funding. This will ensure that application requirements are met, that each step of the process is systematically reviewed, and that communication between the library and all funding and/or oversight agencies is maintained.

The Anaheim Public Library has not committed any waste, fraud or abuse in the course of any of the noted deficiencies. The City recognizes the importance of adhering to procedures however, in the instant case, there has been no detriment to the public and the enforcement of the USAC's recommendations will result in a tremendous public detriment. All of the disbursed funds have been properly allocated to provide the services identified in the grant applications and the Technology Plan that meets the state's approval standards.

The Library submits this appeal and respectfully requests that the Library be permitted to

retain the funds to ensure that the public interest in the delivery of advanced telecommunications services to its expanding population may continue to be served.

Carol Stone

A handwritten signature in cursive script that reads "Carol Stone". The signature is fluid and elegant, with the first letters of each name being capitalized and prominent.

City Librarian, City of Anaheim



**Attachment A**

Subject: Letter of Appeal  
Billed Entity Name: Anaheim Public Library  
Billed Entity Number: 143737  
FCC Registration Number: 0013407721  
471 Application Number: 520930  
Funding Request Number: 1434000  
CC Docket No: 02-6

**Thomas Edelblute**

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**From:** Brandis, Rushton [rbrandis@library.ca.gov]  
**Sent:** Thursday, February 07, 2008 11:15 AM  
**To:** Thomas Edelblute  
**Subject:** RE: Question re: tech plan you never received

Yes. The certification lists the five points required of a tech plan. In the template on our Web site, those core elements are listed on page 2 of the instructions. See

<http://www.library.ca.gov/services/docs/TechPlan.doc>

Page 2 listing the five criteria for a technology plan are included in the attached pdf file and are taken from

<http://www.universalservice.org/sl/applicants/step02/technology-planning/>

Rush

Mr. Rushton Brandis, Technology Consultant  
Library Development Services Bureau  
California State Library  
P.O. Box 942837  
Sacramento, CA 94237-0001  
(916) 653-5471 (voice)  
(916) 653-8443 (fax)  
rbrandis at library dot ca dot gov

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**From:** Thomas Edelblute [mailto:TEdelblute@anaheim.net]  
**Sent:** Thursday, February 07, 2008 10:51 AM  
**To:** Brandis, Rushton  
**Subject:** Question re: tech plan you never received

Here is a question I have for you, and the response might be helpful to our auditors. If you had this tech plan on file, does it look like something you would have issued a certification for.

Thomas Edelblute  
Public Access Systems Coordinator  
Anaheim Public Library

2/7/2008

FCC Registration Number: 0013407721 (208) 664-0969  
 471 Application Number: 520930  
 Funding Request Number: 1434000  
 CC Docket No: 02-6

Subject: Letter of Appeal  
 Billed Entity Name: Anaheim Public Library  
 Billed Entity Number: 143737

**Coeur d'com**

1703 N. 3rd Street  
 PO Box 3196  
 Coeur d'Alene, ID 83816-2523  
 (208) 667-2031

Page: 1

# Invoice

Number: 1821

Date: January 11, 2007

*SHIPPED***Bill To:**

Thomas Edelblute  
 Anaheim Public Library  
 500 West Broadway  
 Anaheim, CA 92805

**Ship To:**

City of Anaheim  
 Information Services  
 201 S. Anaheim Blvd 4th Floor  
 Anaheim, CA 92805

PO Number	Terms	Sales Rep
Contract #3944	Net 30	Jeff Adams

Product ID	Description	Quantity	Price	Ta	Amount
N5-SYSTEM-R	N5 Bundle with 2 power supplies	3.00	7,471.75	✓	22,415.25
N-POE-1200W	Matrix POE 1200 Watt Power Supply	6.00	780.00	✓	4,680.00
7H4385-49	DFE w/48 10/100 RJ45 and NEM slot	12.00	9,746.75	✓	116,961.00
7G4202-60	DFE w/60 10/100/1000 RJ45 ports	1.00	13,646.75	✓	13,646.75
7G-6MGBIC-A	NEM w/6 1000Base-X ports	3.00	2,271.75	✓	6,815.25
MGBIC-08	1000Base-LX/LH Mini GBIC SMF	2.00	3,246.75	✓	6,493.50
MGBIC-LC01	Mini GBIC 1000Base-SX MM Port	12.00	321.75	✓	3,861.00
ES-SN-S13	Three years Enterasys SupportNet	3.00	9,834.00		29,502.00
<p><i>apply all to FRN</i></p> <p><i>apply first 300 to FRN</i></p> <p>Coeur d'com SPIN: 143029444            Funding Request Number: 1434000            Billing Account Number: 7147651880            Funding Commitment Decision:            \$178,433.45            Discount Percentage approved by SLD: 90            Form 471 Application Number: 520930</p> <p><i>101-213-4262-9720            pay on contract #3944            for questions call            Thomas Edelblute x1759</i></p>					

*installed 5/07*  
*Enterasys N5 network switch*

The price for the Goods is stated in the invoice and, unless otherwise specified by Seller, is payable within 30 days. If Buyer does not make payment when due, Buyer shall pay a fee on past due amounts of 1.5% per month or the maximum rate allowed by law, whichever is less.

0 - 30 days	31 - 60 days	61 - 90 days	> 90 days	Total
\$0.00	\$0.00	\$299,067.31	\$0.00	\$299,067.31

CHECK DATE: 04/09/2007

VENDOR: VC0000001511

CITY OF ANAHEIM 000000001497465  
NAME: COEUR D'COM COMMUNICATIONS INC

1497465

INVOICE NUMBER	INVOICE DATE	DESCRIPTION	PURCHASE ORDER NO.	AMOUNT
1821	01/11/2007	SUPPORTNET		217,927.39
<b>Attachment B</b> Subject: Letter of Appeal Billed Entity Name: Anaheim Public Library Billed Entity Number: 143737 FCC Registration Number: 0013407721 471 Application Number: 520930 Funding Request Number: 1434000 CC Docket No: 02-6				

Vendor: VC0000001511

Page TOTAL: 217,927.39  
217,927.39

DO NOT ACCEPT THIS CHECK UNLESS THE PINK LOCK & KEY ICONS FADE WHEN WARMED AND YOU CAN SEE A PENTAGON SHAPED TRUE WATERMARK WHEN HELD TO THE LIGHT.

TO THE TREASURER  
CITY OF ANAHEIM  
ANAHEIM, CALIFORNIA

ACCOUNTS PAYABLE ACCOUNT  
**CITY OF ANAHEIM**  
ANAHEIM, CALIFORNIA

1497465

DATE 04-09-2007

THE SUM OF

Two Hundred Seventeen Thousand Nine Hundred Twenty Seven And 39/100 Dollars

AMOUNT \$\*\*\*\*\*217,927.39

PAY TO THE ORDER OF  
COEUR D'COM COMMUNICATIONS INC  
PO BOX 3196  
COEUR D'ALENE, ID 83816-2523

VOID 180 DAYS  
AFTER DATE OF ISSUE

WELLS FARGO BANK, N.A.  
116 HOSPITAL DRIVE  
VAN WERT, OH 46091

56-382  
412

1497465 1041203824:96000433021

RUB OR BREATHE ON THE PINK LOCK & KEY ICONS - COLOR WILL FADE AND THEN REAPPEAR ON AN AUTHENTIC CHECK - IF COLOR DOES NOT FADE DO NOT ACCEPT